Office Supreme Court, U.S.
FILED
JUN 5 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. ~~1018~~ 847

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INCORPORATED, ET AL.,

Petitioners,

v.

COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

ROBERT L. CARTER,
20 West 40th Street,
New York 18, N. Y.;

OLIVER W. HILL,
118 East Leigh Street,
Richmond, Virginia;

S. W. TUCKER,
Emporia,
Virginia,

Attorneys for Petitioners.

ROLAND D. EALEY,
MARTIN A. MARTIN,
W. HALE THOMPSON,
of Counsel.

INDEX TO PETITION

	PAGE
Opinion Below	1
Jurisdiction	2
Question Presented	4
Statement of the Case	4
Reasons for Allowance of the Writ	6
I—In Refusing To Produce The Names and Addresses Of Members, Petitioners Were Exercising First Amendment Rights As Protected Against State Encroachment By The Fourteenth Amendment	6
II—The Constitutional Rights To Free Speech And Assembly Denied By The Court Below Present Questions Of Great Public Importance Which It Is In The Public Interest To Have Decided By This Court, Particularly In View Of The Conflicting Decisions Of The Supreme Court Of Appeals Of Virginia And The United States District Court For The Eastern District Of Virginia	9
Conclusion	11

INDEX TO APPENDIX

Opinion and Judgment of the Supreme Court of Appeals of Virginia	1a
Order Upon a Petition to Rehear	18a

Table of Cases

	PAGE
Brown v. Board of Education, 347 U. S. 483, 349 U. S. 294	8
Charleston Federal Savings & Loan Association v. Alderson, 324 U. S. 182	4
Ex parte Young, 209 U. S. 123	6
Grosjean v. American Press Co., Inc., 297 U. S. 233	6
Gunnels v. Atlanta Bar Association, 191 Ga. 366, 12 S. E. 2d 602 (1940)	10
Hague v. Congress of Industrial Organizations, 307 U. S. 496	7
In re Ades, 6 F. Supp. 467 (D. C. Md. 1934)	10
N.A.A.C.P., et al. v. Ames, et al., Civil Action No. 2480 (E. D. Va.)	3
N.A.A.C.P. v. Harrison, et al. (In Chancery No. —)	3
N.A.A.C.P., et al. v Patty, Attorney-General, et al., 159 F. Supp. 503 (E. D. Va. 1958)	3, 5, 9, 10
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1	6
Niemotko v. Maryland, 340 U. S. 268	7
Saltonstall v. Saltonstall, 276 U. S. 260	4
Sweezy v. New Hampshire, 354 U. S. 234	7
Theard v. United States, 354 U. S. 278	6
Thomas v. Collins, 323 U. S. 516	6
United States v. Rumely, 354 U. S. 41	7
Watkins v. United States, 354 U. S. 178	7

Statutes

PAGE

Chapter 31, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 5, 8, 10

Chapter 32, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 5, 8, 10

Chapter 33, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 5, 8

Chapter 34, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 4, 8

Chapter 35, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 5, 8, 9, 10

Chapter 36, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 5, 8

Chapter 37, Acts of Virginia General Assembly, Extra Session 1956 ..... 3, 8

Chapter 373, Acts of Virginia General Assembly, Regular Session 1958 4

IN THE

Supreme Court of the United States

October Term, 1957

No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INCORPORATED, *et al.*,

Petitioners,

v.

COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered on March 7, 1958, denying a rehearing in the above-entitled cause.

Opinion Below

The judgment of the Supreme Court of Appeals of Virginia denying a rehearing is unreported and is printed in the Appendix, *infra*, page 18a (R. 81).

The opinion of the Supreme Court of Appeals of Vinginia is reported at 199 Va. 665, — S. E. 2d —and is printed in the Appendix, *infra*, page 1a (R. 39). The orders of the Hustings Court of the City of Richmond, entered upon the *ex parte* motions of respondent and directing the issuance of subpoenas requiring the production of petitioners' books, records, and membership lists, are printed in the Record at pages 5 and 9. The order

of the Hustings Court denying petitioners' motion to quash and dismiss the two subpoenas is printed in the Record at page 32.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia denying a rehearing was entered on March 7, 1958 (Appendix, *infra*, page 18a, R. 81). (The Court's original judgment and opinion was entered on January 20, 1958, Appendix, *infra*, page 1a, R. 39.) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3), the Supreme Court of Appeals of Virginia having ruled on rights, privileges and immunities conferred by the Constitution and laws of the United States.

How The Federal Question Was Presented

The judgment of which review is sought is the judgment of the Supreme Court of Appeals of Virginia denying a rehearing after affirming the order of the Hustings Court of the City of Richmond denying petitioners' motion to quash and dismiss two subpoenas requiring production of petitioners' membership lists before the Committee on Offenses Against the Administration of Justice (hereinafter referred to as the Committee). (Appendix, *infra*, p. 18a).

In substance, the decision of the Supreme Court of Appeals of Virginia, insofar as pertinent to the jurisdiction of this Court, was that petitioners' federal constitutional rights of freedom of speech and assembly were not denied by the orders of the Hustings Court directing the issuance of subpoenas requiring production of petitioners' membership lists before the Committee (Appendix, *infra*, p. 14a).

Petitioners formally presented only questions of state procedural and substantive law to the state courts (R. 13, 2). Petitioners did not raise any question concerning First Amendment rights as guaranteed against state-encroachment by the Fourteenth Amendment since such questions were fully presented in cases pending before the United States District Court for the Eastern District of Virginia.[1]

The Supreme Court of Appeals of Virginia, however, apparently relying on the alleged "suggestion in the appellants' brief that the required disclosure of the names of their members and associates 'would be necessarily coercive' and therefore a restraint on their freedom of speech or right of assembly guaranteed by the First Amendment", considered this question of petitioners' federal constitutional right and decided it adversely to petitioners (Appendix, *infra*, p. 14a).

Although petitioners requested a rehearing on the ground, *inter alia*, that this constitutional question was not

---

[1] On January 21, 1958, the District Court held Chapters 31 and 32 (Acts of Virginia General Assembly, Extra Session, 1956) unconstitutional on free speech and association grounds, *inter alia*, thereby nullifying the Acts' requirements that petitioners file their membership lists with the state. The Court also held invalid Chapter 35, relating to the crime of "barratry", and retained jurisdiction concerning Chapters 33 and 36 pending their interpretation and clarification by the state courts. NAACP, et al. v. Patty, Attorney-General, et al., 159 F. Supp. 503 (E. D. Va., 1958). Petitioners filed suit on May 20, 1958, in the Circuit Court of the City of Richmond, Virginia to determine the applicability and constitutionality of Chapters 33 and 36. NAACP v. Harrison, et al. (In Chancery No. —).

A suit to enjoin the Legislative Committees established by Chapters 34 and 37 from requiring production of petitioners' membership lists on federal constitutional free speech and association grounds was filed in the same United States District Court before the motion to quash the subpoenas in the case at bar was filed in the state court below and this suit is still pending. NAACP, et al. v. Ames, et al. (Civil Action No. 2480).

sed by them nor adequately developed in the record, and as wrongly decided by the Court in violation of the 1st and 14th Amendments. The Supreme Court of Appeals denied a rehearing on March 7, 1958 (Appendix, *infra*, pp. 18a, R. 62-81).

As the highest state court of Virginia "actually considered and decided" a substantial federal question, this Court has jurisdiction to review the state court's judgment. *Charleston Federal Savings & Loan Association* v. *Alderson*, 324 U. S. 182, 185-186. See also *Saltonstall* v. *Saltonstall*, 276 U. S. 260, 267-268.

Question Presented

Whether petitioners' refusal to produce before the Committee on Offenses Against the Administration of Justice the names and addresses of petitioner-organizations' members, voluntary workers, and associates in Virginia was protected by the Fourteenth Amendment's interdiction against state interference with freedom of speech, press, and association?

Statement of the Case

Chapter 34 of the 1956 Extra Session of the Virginia General Assembly established a Committee on Offenses against the Administration of Justice to "investigate * * * the administration and enforcement of those laws relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto."[2]

---

[2] The entire text of Chapter 34 is set forth in the opinion of the Supreme Court of Appeals of Virginia in the case at bar (Appendix, *infra*, pp. 2a-3a, Record, pp. 40-42). Although the Committee has expired by the terms of Chapter 34, (§ 2), a new "Joint Committee" continuing the activities of the committee established by Chapter 34 was authorized by Chapter 373, Acts of Virginia General Assembly, Regular Session, 1958. Thus, the issues presented by the case at bar are still unresolved and of continuing significance.

By letter dated January 14, 1957, the Committee requested petitioner-organizations to supply a large quantity of information including membership lists (R. 15).

By letters dated February 13, 1957, petitioner-organizations agreed to furnish the information requested except for the names and addresses of members and contributors and information leading thereto (R. 15).[3]

On February 14, 1957, the Hustings Court of the City of Richmond, upon the *ex parte* motion of the Committee, ordered a summons to be issued directing petitioner W. Lester Banks, as Executive Secretary of petitioner—Virginia State Conference of NAACP Branches—to produce before the Committee much information including membership lists (R. 46; see quotations from subpoena contained in the opinion of the Supreme Court of Appeals of Virginia, Appendix, *infra*, pp. 4a-5a).

On March 8, 1957, the Hustings Court ordered a second summons issued, again upon the Committee's *ex parte* motion, calling for substantially the same information (R. 7-11).

All of the information demanded in the subpoenas was furnished the Committee except for the names and addresses of members, voluntary workers, and associates (See Appendix, *infra*, p. 5a, R. 44).

On March 11, 1957, petitioners moved to quash the subpoenas, which motion the Hustings Court heard on March 13, 1957 and denied on March 18, 1957 (R. 13-32).

---

[3] The letters stated, as one reason for the refusal to give such information, the fact that the NAACP had at that time a suit pending in the United States District Court for the Eastern District of Virginia to determine whether the NAACP, its Virginia State Conference, and branches in Virginia could be required to give the state membership lists and otherwise comply with Chapters 31, 32, 33, 35 and 36 of the 1956 Extra Session of the Virginia General Assembly (Record, p. 15). See NAACP, et al. v. Patty, Attorney-General, et al., 159 F. Supp. 503 (E. D. Va., 1958).

Petitioners filed their notice of appeal and assignments of error from the order of the Hustings Court to the Supreme Court of Appeals of Virginia on April 3, 1957 (R. 2). The Supreme Court of Appeals of Virginia awarded petitioners a writ of error and *supersedeas* on April 26, 1957 (R. 1).

The Supreme Court of Appeals of Virginia entered a judgment adverse to petitioners on January 20, 1958 (Appendix, *infra*, p. 1a, R. 39), and denied petitioners' petition for a rehearing on March 7, 1958 (Appendix, *infra*, p. 18a, R. 81).

REASONS FOR ALLOWANCE OF THE WRIT

I

In Refusing To Produce The Names And Addresses Of Members, Petitioners Were Exercising First Amendment Rights As Protected Against State Encroachment By The Fourteenth Amendment.

Petitioner-organizations and their members seek to secure for Negro Americans their constitutional rights and the elimination of racial discrimination. Petitioners employ only peaceful and legal means of persuasion; they rely on the exercise of free speech, press and association, as well as their right of access to the courts when necessary. It is clear that these activities of petitioners are protected by the due process clause of the Fourteenth Amendment. See *Theard* v. *United States*, 354 U. S. 278; *Thomas* v. *Collins*, 323 U. S. 516; *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U. S. 1; *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233; *Ex parte Young*, 209 U. S. 123.

Moreover, as petitioners' views and aims are particularly unpopular and even dangerous in the South today, includ-

ing the state of Virginia, the protection afforded petitioners' "free expression" by the Fourteenth Amendment is peculiarly necessary. See *Sweezy* v. *New Hampshire*, 354 U. S. 234; *Niemotko* v. *Maryland*, 340 U. S. 268; *Hague* v. *Congress of Industrial Organizations*, 307 U. S. 496; cf. *Watkins* v. *United States*, 354 U. S. 178. Revealing the names of petitioner-organizations' members would subject the members to reprisals, would seriously weaken the organizations and would threaten the continuance of petitioners' activities in Virginia to end racial discrimination. See *Sweezy* v. *New Hampshire*, 354 U. S. 234; *United States* v. *Rumely*, 354 U. S. 41 (Concurrence of Mr. Justice Douglas).

Legislative investigating committees are not immune from constitutional prohibitions concerning suppression of freedom of expression. In order to constitutionally interfere with petitioners' First Amendment rights as secured by the Fourteenth Amendment by requiring disclosure of membership lists, the Committee must demonstrate a rational and justifiable basis for such interference. See *Sweezy* v. *New Hampshire*, 354 U. S. 234; *Watkins* v. *United States*, 354 U. S. 178; *United States* v. *Rumely*, 345 U. S. 41.

The Committee in the case at bar, however, has not and can not present any legitimate compelling reason for demanding the names and addresses of petitioner-organizations' members. Petitioner-organizations' activities concerning civil rights litigation are not shrouded in secrecy but are publicized and well-known: if a needy litigant requests petitioner-organizations' assistance in a worthy case involving racial discrimination, the organizations will render financial aid to defray attorney's fees as well as court costs and incidental expenses. Furthermore, the officers and employees of petitioner-organizations stand ready to testify and answer any legitimate questions concerning their work; their names and addresses have not been withheld from the Committee on the basis of the First and Fourteenth Amendments (Appendix, *infra*, p. 5a, R. 43-44).

The true purpose of Chapter 34 and the Committee's actions taken thereunder is to prevent petitioners from aiding needy litigants seeking to secure an end to racial discrimination and particularly state denials of federal constitutional rights. As such, Chapter 34 and related Acts passed at the same time constitute merely one more attack on the organization which was instrumental in bringing before this Court the question of public school desegregation decided in *Brown* v. *Board of Education*, 347 U. S. 483, 349 U. S. 294, and which is now engaged in aiding implementation of those decisions.

The seven related Acts passed by the Virginia General Assembly, 1956 Extra Session, all militate against petitioners' extension of aid to needy litigants in cases involving racial discrimination. Chapter 31 requires prior registration by groups soliciting funds to be used for such purposes. Chapter 32 requires prior registration by groups using funds for such purposes *inter alia*. Chapter 33 forbids attorneys from accepting employment in certain cases where funds are supplied by persons other than the litigants and forbids organizations from procuring attorneys for others. Chapter 34 creates the Committee, which is respondent herein, to investigate the enforcement of laws relating to the promotion or support of litigation by nonparties. Chapter 35 defines and punishes such aid to needy litigants as rendered by petitioners as "barratry". Chapter 36 forbids the giving or acceptance of financial assistance in certain proceedings against the State, its subdivisions, and agencies. Chapter 37 creates another committee to investigate groups seeking to "encourage or promote litigation relating to racial activities in this State."

The Supreme Court of Appeals of Virginia explicitly cited investigation of the administration and enforcement of Chapter 35 as a revelant basis for the Committee's demand for petitioner-organizations' membership lists (Appendix, *infra*, pages 4a, 10a, R. 42-43, 50-52). Since petitioners' activities in this field are admittedly well-known,

and its attack on the constitutionality of Chapter 35 as applied to such activities is a matter of judicial record,[4] it is submitted that no compelling justification for the Committee's demand for membership lists exists. Consequently, petitioners were protected by the Fourteenth Amendment in refusing to comply with the demand for membership lists in order to continue freely exercising their rights of free expression, association, and resort to the courts.

II

The Constitutional Rights To Free Speech And Assembly Denied By The Court Below Present Questions Of Great Public Importance Which It Is In The Public Interest To Have Decided By This Court, Particularly In View Of The Conflicting Decisions Of The Supreme Court Of Appeals Of Virginia And The United States District Court For The Eastern District Of Virginia.

In essence, the question presented in the case at bar is whether state infringements of free speech and association due to compulsory disclosure of membership lists are justified to prevent nonparties from aiding needy litigants in suits seeking to end racial discrimination and to secure constitutional rights for Negro Americans. The Supreme Court of Appeals of Virginia has answered this question in the affirmative (Appendix, *infra*, page 1a, R. 39). The United States District Court for the Eastern District of Virginia has answered it in the negative. *NAACP et al.* v. *Patty, Attorney-General, et al.*, 159 F. Supp. 503 (E. D. Va., 1958), now on appeal to this Court.

Whereas the highest state court of Virginia expressly relied on Chapter 35 to find a relevant basis for the Committee's demand for petitioner-organizations' membership lists, the federal district court held Chapter 35

---

[4] NAACP, et al. v. Patty, Attorney-General, et al., 159 F. Supp. 503 (E. D. Va., 1958).

unconstitutional, citing *In re Ades*, 6 F. Supp. 467 (D. C. Md. 1934) and *Gunnels* v. *Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602 (1940). The district court recognized "the approval given by the courts to services voluntarily offered by members of the bar to persons in need, even when the attorneys have been selected by corporations organized to serve a cause in a controversial field." *NAACP et al.* v. *Patty, Attorney-General, et al.*, 159 F. Supp. 503, 532 (E. D. Va. 1958).

> "Chapter 35, in failing to recognize this settled rule, violates well-established constitutional principles. . . . In the first place, the statute obviously violates the equal protection clause, for it forbids the plaintiff to defray the expenses of racial litigation, while at the same time it legalizes the activities of legal aid societies that serve all needy persons in all sorts of litigation. . . . Moreover, Chapter 35 violates the due process clause, for it is designed to put the plaintiff corporations out of business by forbidding them to encourage and assist colored persons to assert rights established by the decisions of the Supreme Court of the United States." *NAACP et al.* v. *Patty, Attorney-General, et al.*, *supra*, at 532-533.

According to the Supreme Court of Appeals of Virginia, the Committee's demand for petitioner-organizations' membership lists is "[c]learly . . . within the State's police power." (Appendix, *infra*, page 14a, R. 57). The federal district court, however, was unable to find any police power justification for similar membership list disclosure requirements under Chapters 31 and 32. *NAACP et al.* v. *Patty, Attorney-General, et al., supra*, at 526-527.

Thus, the conflicting decisions of the Supreme Court of Appeals of Virginia and of the United States District Court for the Eastern District of Virginia place petitioners in a doubtful position concerning the federal constitutionality of their refusal to disclose the names and addresses of members in Virginia. Moreover, the conflict concerning petitoners' assistance to needy litigants requesting aid in

cases involving racial discrimination affects one of petitioners' major activities in seeking to secure "first-class" citizenship for Negro Americans.

The significance of the question in the case at bar, not only to petitioners but also to the public interest in adherence to the Federal Constitution, is obvious. The exercise of First Amendment rights as well as the right of resort to the courts to secure compliance with the Federal Constitution's ban on state-enforced racial discrimination involves activity fundamental to our democratic society.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT L. CARTER,
20 West 40th Street,
New York 18, N. Y.;

OLIVER W. HILL,
118 East Leigh Street,
Richmond, Virginia;

S. W. TUCKER,
Emporia,
Virginia,

Attorneys for Petitioners.

ROLAND D. EALEY,
MARTIN A. MARTIN,
W. HALE THOMPSON,
of Counsel.

APPENDIX

Opinion and Judgment of the Supreme Court of Appeals of Virginia

(Opinion of Supreme Court of Appeals)

OPINION BY JUSTICE JOHN W. EGGLESTON

Richmond, Virginia, January 20, 1958

From the Hustings Court of the City of Richmond
W. MOSCOE HUNTLEY, Judge

This writ of error was granted to review an order denying a motion to quash and dismiss two subpoenas which had been issued pursuant to the orders of the court below upon the ex parte motions of a joint legislative committee created by an Act of the General Assembly (Acts 1956, Ex. Sess., ch. 34, p. 35), hereinafter referred to as the Committee. The subpoena directed W. L. Banks, as executive secretary of the Virginia State Conference of NAACP Branches, to produce before the Committee certain books, writings and other records. In a written motion to quash the subpoenas the National Association for the Advancement of Colored People, a corporation, hereinafter referred to as NAACP, the Virginia State Conference of NAACP Branches, a voluntary unincorporated association, and Banks challenged both the jurisdiction of the court to order the issuance of the subpoenas and the validity of the Act. After a hearing on the motion to quash, at which the movants introduced evidence in support of their position, the court entered an order denying the motion to quash.

The Committee concedes that the order under review is a final judgment, reviewable by this court under Code, § 8-462.

The assignments of error raise these questions: (1) Is the Hustings Court of the City of Richmond authorized to

direct the issuance of the subpoenas; (2) Does the Act authorize the issuance of the subpoenas without notice, and if so, does it violate the constitutional requirement of due process; (3) Does the disclosure of the information sought by the subpoenas violate any constitutional rights of the appellants; (4) Does the Act creating the Committee and prescribing its functions violate § 39 of the State Constitution; and (5) Did the lower court abuse its sound judicial discretion in directing the issuance of the subpoenas?

The Act in question is printed in the margin.[1] It ere-

---

[1] "*An Act to create a joint committee of the General Assembly to study and report upon the administration and enforcement of certain statutes; to prescribe the powers of such joint committee; to provide for the selection, terms of office and compensation of the members of such committee; and to require reports from the committee to the General Assembly.*

"Be it enacted by the General Assembly of Virginia:

"1. § 1. There is hereby created a joint committee of the General Assembly to be known as the Committee on Offenses Against the Administration of Justice, hereinafter referred to as Joint Committee. Such Joint Committee shall investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being administered and enforced and shall specifically direct its attention to the administration and enforcement of those laws relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto. The Joint Committee shall be composed of five members to be selected as follows: Three of the members shall be appointed by the Speaker of the House of Delegates from the membership of the House Committee for Courts of Justice and two of the members shall be appointed by the President of the Senate from the membership of the Senate Committee for Courts of Justice. Members shall serve on the Joint Committee during the effective period of this act; the presiding officer of each house shall have the power to fill vacancies occurring on the Joint Committee. The Joint Committee shall meet at least once in each three month period and oftener on call of the chairman or a majority of the members. The members of the Joint Committee shall receive the same salary and expenses for each day spent in the performance of their duties as is

ated a Joint Committee to be known as the Committee on Offenses Against the Administration of Justice, composed of three members of the House of Delegates and two members of the Senate. The Committee was directed to "investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being administered and * * * specifically direct its attention to the administration and enforcement of those laws relating to champerty, maintenance, barratry, running and capping and other offenses of any other

---

allowed under §§ 14-29.1 and 14-5 of the Code of Virginia, respectively, to be paid from the contingent fund of the General Assembly together with any other expenses incurred by the Joint Committee. The Joint Committee is hereby specifically vested with the powers and duties conferred upon committees of the General Assembly by § 30-10 of the Code of Virginia and any other provisions of law under which powers are conferred upon committees of the General Assembly. In addition to the foregoing powers, the Joint Committee shall be empowered to administer oaths and examine witnesses and may employ counsel to assist in its investigations: The Joint Committee may, in addition to the procedure provided in § 30-10 of the Code of Virginia, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court, upon such motion, shall issue such subpoenas, writs, processes or orders as the court deems necessary.

"§ 2. All officers and agencies of the State shall assist the Joint Committee in the discharge of its duties.

"§ 3. The Joint Committee shall have plenary power to oversee the administration and manner of enforcement of the several statutes set forth in § 1 hereof, and, not later than sixty days preceding the next regular session of the General Assembly, it shall make a written report to the General Assembly upon the administration and method of enforcement of said statutes and shall set forth in its report its findings and recommendations and drafts of any amendatory legislation the Joint Committee deems desirable.

"2. This act shall be effective until the convening of the next regular session of the General Assembly.

"3. An emergency exists and this act is in force from its passage." (Acts 1956 Ex. Sess., ch. 34, p. 35.)

nature relating to the promotion or support of litigation by persons who are not parties thereto."

The Committee was further given "plenary power to oversee the administration and manner of enforcement of the several statutes" relating to the above offenses, and "make a written report to the General Assembly upon the administration and method of enforcement of said statutes," together with "its findings and recommendations and drafts of any amendatory legislation" which it "deems desirable."

Among the statutes which the Committee was directed to study was an emergency act passed at the same session, defining and prohibiting the crime of barratry and providing penalties therefor. Acts 1956, Ex. Sess., ch. 35, p. 36; Code, 1956, Add. Supp., § 18-349.25 *ff*.

The Act creating the Committee empowered it to compel the attendance of witnesses or production of documents by two methods: (1) By proceeding under Code, § 30-10, which authorizes a Joint Committee of the General Assembly to compel such attendance or the production by a summons issued by the clerk of the Senate or House of Delagates, or the clerk of the Committee; or (2), by motion made by the Committee "before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought" for an order directing the issuance of a subpoena. In the present case the latter procedure was followed.

The first of the subpoenas, issued on February 14, 1957, directed Banks to produce before the Committee writings and documents containing the following information:

> "1. The names and addresses of the principal officers of the Virginia State Conference of NAACP Branches and also the names and addresses of the agents, servants, employees, officers and voluntary workers and associates through whom such Con-

ference carries on its activities in the Commonwealth of Virginia, and also the names of its members in the Commonwealth of Virginia, together with the last known addresses of all of the above designated persons; and

"2. All expenditures and disbursements made by the Virginia State Conference of NAACP Branches within the Commonwealth of Virginia during the year 1956, together with the names and addresses of the persons, firms, corporations, and associations to whom such expenditures and disbursements were made, and, the names and addresses of the persons, firms, corporations, associations, and partnerships on whose behalf such expenditures and disbursements were made."

In his testimony at the hearing on the motion to quash, Banks testified that all of this information had been furnished except the names of the 23,000 members of the organization and its "voluntary workers and associates" through whom the Conference carries on its activities in this State.

The subpoena issued on March 8, 1957, called for substantially the same information as that required in the first subpoena and certain additional information. Banks testified that none of this additional information had been furnished. We deem it unnecessary to detail the information requested because, as we read the briefs and record, the real issue is whether the witness should be compelled to disclose the names and addresses of the members of the NAACP, and its voluntary workers and associates, in Virginia.

The record shows that the NAACP is a "membership corporation" chartered in 1911 under the laws of the State

of New York. It has been registered with the State Corporation Commission of Virginia and is authorized to do business in this State. It has unincorporated branches in Virginia which operate as "semi-autonomous bodies" under the general jurisdiction of the parent organization. The Vinginia State Conference of NAACP Branches is a voluntary unincorporated association of branches licensed by the NAACP in this State.

The articles of incorporation of the NAACP state its principal objectives as follows:

> " . . . [T]o promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.
>
> "To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects."

The first contention of the appellants is that the Hustings Court of the city of Richmond is not authorized to order the issuance of the subpoenas. The Act empowers the Committee to procure a subpoena by motion "before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought." The appellants argue that while the words "corporation court" embrace hustings courts (Code, § 1-13(4)), no such court has jurisdiction to issue a subpoena in aid of an extra-judicial investigation. Moreover, they

say, the jurisdiction of the Hustings Court of the city of Richmond is fixed and limited by the provisions of Code, § 17-153, and no provision is there found for the issuance of subpoenas for such purpose.

The ready answer to this contention is that while the Constitution authorizes the creation of circuit and corporation courts, it does not fix or limit their jurisdiction. Consequently, they have such jurisdiction as is or may be conferred upon them by the General Assembly. Here the Act expressly confers upon the specified court to which application is made, jurisdiction and authority to compel the attendance of witnesses or the production of documents before the Committee by the issuance of the necessary subpoena.

The testimony of Banks shows that the documents sought to be produced are in his possession in the city of Richmond where he resides. Hence, the Hustings Court of that city had the required *territorial* "jurisdiction of the person or documents." Obviously the word "jurisdiction," as here used, means the territory in which the power of the court is to be exercised. See *McCullough* v. *Scott,* 182 N. C. 865, 109 S. E. 789, 793.

The appellants next contend that the issuance of subpoenas *ex parte* is not authorized by the Act, and if so, the Act violates the Due Process Clauses of the Fourteenth Amendment to the Federal Constitution and the Constitution of Virginia. Both contentions are without merit.

While it is true that the Act does not expressly authorize the issuance of the required subpoena without notice to the intended witness and a hearing on the application, it does not require such notice. Had the General Assembly intended that a subpoena should be issued only after notice and hearing, it would have said so.

It will be recalled that the Act also authorizes the Committee to procure a subpoena compelling the production of

documents by following the procedure prescribed in Code, § 30-10, *supra*. That statute does not require prior notice to the intended witness and a hearing before the issuance of a subpoena.

Similarly, the issuance of a subpoena duces tecum under Code, § 8-301, requires no prior notice or hearing. Upon a motion supported by affidavit that a book, writing or document in the possession of a person not a party to the matter in controversy is material and proper to be produced before a court, the court may, and usually does, as a matter of course, order the issuance of a subpoena duces tecum to compel such production.

The usual and approved method of testing the validity of a subpoena duces tecum, where issued without a previous judicial determination of the sufficiency of the application, is by a motion to quash or vacate. 58 Am. Jur., Witnesses, § 28, pp. 37, 38. See also, 130 A. L. R. 327, Annotation; Rule 45, Federal Rules of Civil Procedure.

"The motion or application to set aside or vacate the subpoena gives the court the opportunity to examine the issues raised by the pleadings in the cause, and in the light thereof to determine the apparent relevancy of the evidence which is sought to be elicited, and also to pass on the question whether an order for the production of the document in question would constitute an unlawful invasion of privacy. . . . " 97 C. J. S., Witnesses, § 25-j, p. 397.

Such was the procedure in the present case. Upon the application of the Committee, supported by the affidavit of its chairman, the lower court found it "proper and necessary" to the accomplishment of the purposes of the Committee that the documents be produced, and ordered the issuance of the subpoenas. The validity of the subpoenas was challenged and determined in the proceeding on the motion to quash. Pending the outcome of that proceeding

the required documents and information have not been produced.

From what has been said it clearly appears that the procedure here followed fully satisfies the due process requirements of the Fourteenth Amendment and § 11 of the Virginia Constitution. It is universally held that the requirement of due process is satisfied where an interested party is given a full opportunity to be heard before the matter is finally determined. 16A C. J. S., Constitutional Law, § 622, pp. 825, 826; 12 Am. Jur., Constitutional Law, § 611, p. 306; *Lichter* v. *United States,* 334 U. S. 742, 791, 792, 68 S. Ct. 1294, 92 L. ed. 1694. For an application of the principle to a subpoena duces tecum, see *Consolidated Rendering Co.* v. *Vermont,* 207 U. S. 541, 551, 28 S. Ct. 178, 52 L. ed. 327, 12 Ann. Cas. 658.

The appellants contend that the required disclosure of the information sought by the subpoenas violates their rights protected by the Federal and State Constitutions. It is suggested that the request for the large volume of information is unreasonable and immaterial to the Committee's lawful purposes. However, as has been said, they have already voluntarily furnished much of the information and we are not now concerned with whether they should have done so. To repeat, as we read their briefs, the appellants are here objecting to the disclosure of the names and addresses of the members of the NAACP and its "voluntary workers and associates," in this State. Consequently, we shall confine our inquiry to whether there is any constitutional prohibition against the requirement that they disclose this information.

As has been said, the Act creating the Committee directed it to "investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being administered and enforced and shall specifically direct its attention to the administration and enforcement of those laws relating to

champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto."

At the same extra session the General Assembly passed an emergency act defining the crime of barratry, prohibiting such offense, and the aiding and abetting such offense. (Acts 1956, Ex. Sess., ch. 35, p. 36; Code, 1956 Add. Supp., § 18-349.25, etc.) The Act defines "barratry"[2] as the "offense of stirring up litigation". It defines "stirring up litigation" as "instigating or attempting to instigate a person or persons to institute a suit at law or equity."

The Committee insists that the disclosure of the names of the members of the NAACP and its voluntary workers and associates in this State is relevant to its inquiry. In overruling the motion to quash, the lower court necessarily found that such information was relevant and there is no showing to the contrary by the appellants. We cannot say as a matter of law that the trial court's ruling was wrong. The Committee was directed to investigate "the extent and manner" in which certain laws relating to the administration of justice are being "administered and

---

[2] Barratry is an offense at common law. It is defined as frequently stirring up suits and quarrels either at law or otherwise. 9 C. J. S. Barratry, § 1, p. 1546; 10 Am. Jur., Champerty and Maintenance, § 3, p. 551.

Champerty, likewise a common-law offense, is defined as an agreement whereby a person without interest in another's suit undertakes to carry it on at his own expense, in whole or in part, in consideration of receiving, in the event of success, a part of the proceeds of the litigation. 14 C. J. S., Champerty and Maintenance, § 1-a, p. 356; 10 Am. Jur., Champerty and Maintenance, § 2, p. 550.

Maintenance exists when a person without interest in a suit officiously intermeddles therein by assisting either party with money or otherwise to prosecute or defend it. 14 C. J. S., Champerty and Maintenance, § 1-b, p. 357; 10 Am. Jur., Champerty and Maintenance, § 1, pp. 548, 549.

These several offenses are prohibited by statute in many states.

enforced." This direction included an inquiry into whether these laws were being violated, and if so, whether the corporate appellant or its unincorporated associate or some of their members were among the offenders.

The legislature has inherent power to appoint committees as means of obtaining necessary information to aid it in preparing and enacting wise and needful laws. 49 Am. Jur., States, etc., § 40, pp. 257, 258.

In 97 C. J. S., Witnesses, § 25-j, pp. 397, 398, it is said that in determining whether the production of documents should be enforced, "it is proper to consider whether the subpoena duces tecum calls for the production of specific documents or proof, and, if so, whether that proof is prima facie sufficiently relevant to justify enforcing its production. In general, whether the subpoena shall be set aside is a matter within the discretion of the court. While in a proper case the subpoena may, or should be, quashed or vacated, such relief will be *granted only on a very clear showing of the right thereto*; and the subpoena should not be quashed or set aside, on the ground that the evidence called for by it is not revelant or material, in a close or doubtful case, but *only where the futility of the process to uncover anything useful or legitimate is inevitable or obvious.*" (Italics supplied.) See also, *In re Edge Ho Holding Corp.*, 256 N. Y. 374, 176 N. E. 537, 539.

These principles were applied by the highest court of New York in *In re Joint Legislative Committee, etc.*, 285 N. Y. 1, 32 N. E. 2d 769. That court affirmed an order refusing to vacate a subpoena duces tecum requiring the production of a membership list of a teachers' union before a legislative committee empowered to investigate the educational system of the State of New York. Because of the similarity of the issues presented, what was said in that case is particularly interesting in the case now before us. In refusing to vacate the subpoena the court pointed out that, "The law-making power given to the Legislature

authorizes it, by inquiry, to ascertain facts which affect public welfare and the affairs of government. Such power of inquiry, with process to enforce it, is an essential auxiliary to the legislative function. * * *"

Continuing, it said: "In the present proceeding, as we have seen, we must assume that the legislative inquiry was well intended. If a subpoena is to be quashed in advance of a committee hearing, upon a forecast of the testimony sought and arguments as to its probable effect, the purpose of the inquiry may be thwarted. We cannot say as a matter of law, upon the record at hand, that the subpoena now challenged would be futile as an aid to the legislative inquiry instituted by the Joint Resolution. It is only when futility of such process is inevitable or obvious that there must be 'a halt upon the threshold' of the inquiry." (Citing *In re Edge Ho Holding Corp., supra.*) 32 N. E. 2d, at page 771.

Similarly, in the present case it is not obvious nor have the appellants shown that the futility of the process is inevitable or that the desired evidence is immaterial to the subject of the Committee's inquiry.

While such a legislative committee has broad powers in calling for the production of relevant evidence, such power is subject to constitutional restraints designed for the protection of the rights of the individual. 81 C. J. S., States, § 43, p. 961.

In their brief the appellants expressly disavow any claim of privilege against self-incrimination under § 8 of the Virginia Constitution, or under the Fifth Amendment to the Constitution of the United States.[3] Neither do they rely upon the unreasonable searches and seizures provision of the Fourth Amendment to the Federal Constitu-

---

[3] The Fifth Amendment does not extend to the actions of a state or its agencies. *Adamson* v. *People of the State of California*, 332 U. S. 46, 50, 51, 67 S. Ct. 1672, 91 L. ed. 1903.

tion.[4] They claim that compelling them to disclose the names of their members, associates and workers deprives them of their right of privacy in violation of the Due Process Clauses of the Fourteenth Amendment and § 11 of the Virginia Constitution.

We need not stop to inquire whether the corporate appellant and its unincorporated Conference of Branches may claim the protection of this provision of the Fourteenth Amendment. See *United States* v. *Morton Salt Co.*, 338 U. S. 632, 651, 652, 70 S. Ct. 357, 94 L. ed. 401. For it is well settled that the right of privacy protected by the Constitution is subject to the reasonable exercise of the state's police power. 11 Am. Jur., Constitutional Law, § 262, p. 998 *ff.*; 16A C. J. S., Constitutional Law, § 571, p. 588 *ff.*; *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 72, 49 S. Ct. 61, 73 L. ed. 184.

The investigation by a legislative committee within the scope of its prescribed duties is universally recognized as a reasonable exercise of such police power. Consequently, the production of papers material to such an inquiry may not be refused merely because they are private.

Nor is there any substance to the appellants' contention that the required disclosure of this information violates the Privileges and Immunities Clause of the Fourteenth Amendment. As is said in 12 Am. Jur., Constitutional Law, § 448, p. 92: "The Fourteenth Amendment deals only with the rights of citizens of the United States as such, and the privileges and immunities protected thereby are those of citizens of the United States, as distinguished from the privileges and immunities of the citizens of a state as such. It places the privileges and immunities of citizens of the United States under the protection

---

[4] The Fourth Amendment likewise does not extend to the actions of a state or its agencies. *Wolf* v. *People of the State of Colorado*, 338 U. S. 25, 33, 69 S. Ct. 1359, 93 L. ed. 1782.

of the Federal Constitution and leaves the privileges and immunities of citizens of a state under the protection of the state Constitution."

New York ex rel. Bryant v. *Zimmerman, supra*, involved the constitutionality of a New York statute requiring membership corporations and unincorporated associations, with certain exceptions, to file with the Secretary of State a sworn copy of their constitutions, by-laws, rosters of membership, etc. Against the contention that this statute violated the Privileges and Immunities Clause of the Fourteenth Amendment, it was held that, "If to be and remain a member of a secret, oath-bound association within a state be a privilege arising out of citizenship at all, it is an incident of state rather than United States citizenship; and such protection as is thrown about it by the Constitution is in no wise affected by its possessor being a citizen of the United States." 278 U. S., at pages 71, 72.

Nor do we agree with the suggestion in the appellants' brief that the required disclosure of the names of their members and associates "would be necessarily coercive" and therefore a restraint on their freedom of speech or right of assembly guaranteed by the First Amendment. No limitation by license or otherwise on the activities of the appellants is here involved. This is an inquiry into such activities and the identity of those who are involved therein, to ascertain whether they are engaged in unlawful practices. Clearly, this is within the State's police power.

The appellants next contend that the disclosure of their members constitute an unlawful search and seizure prohibited by § 10 of the Virginia Constitution. That section provides, "That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not partic-

ularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

In *McClannan* v. *Chaplain,* 136 Va. 1, 116 S. E. 495, we held that "this section merely adopts and makes unchangeable by the legislature the common law" prohibition against unreasonable searches and seizures. "It is the personal and political liberty of the citizen, especially the privacy of his home and his papers, which is sought to be protected by the common law rule against 'unreasonable' search and seizure * * *." 136 Va., at pages 15, 16.

It is generally held that the compulsory production of books and papers, described with reasonable particularity, covering a reasonable period of time, and relevant to the subject of the inquiry, does not constitute an unreasonable search and seizure. 47 Am. Jur., Searches and Seizures, §§ 59, 60, pp. 539, 540; 79 C. J. S., Searches and Seizures, §§ 36, 37, pp. 799-805.

Under these principles we hold that the production of the required names does not constitute an unlawful search and seizure within the prohibition of § 10 of the Virginia Constitution.

The appellants contend that the Act which creates the Committee and outlines its powers is unconstitutional and void because, they say, in authorizing it to "direct its attention to the administration and enforcement" of certain laws, and in giving it the "plenary power to oversee" such administration and manner of enforcement, the General Assembly has conferred on the Committee executive functions in contravention of § 39 of the Virginia Constitution. That section requires that except as is provided in the Constitution, "the legislative, executive and judicial departments shall be separate and distinct." The argument is that the power to "direct its attention to" and to

"oversee" the administration of such laws connotes the power to "enforce" them.

A reading of the Act as a whole shows that there is no substance to this contention. The obvious purpose of the Act is to authorize and direct the Committee to *investigate and report on* the manner in which such laws are administered and enforced by the proper officials. The Committee is given no power of execution of enforcement. Obviously, the fact that the executive department is charged with the function of executing the laws does not prohibit the legislative department from inquiring into the manner and result of such enforcement.

The final contention of the appellants is that the entry of the orders directing the issuance of the subpoenas was an abuse of the court's sound judicial discretion. It is argued that the offenses of barratry, champerty, maintenance and the like are archaic and obsolete; that there is no real need to enact laws dealing with them; and that the real purpose of the Act creating the Committee and authorizing its inquiry is to harass the NAACP and its branches and to hinder or obstruct it in its worthy objectives.

It is, of course, well settled that it is not within the functions of the judiciary to inquire into the motives which impel the legislature to enact laws. 11 Am. Jur., Constitutional Law, § 141, p. 818 *ff.*; 4 Mich. Jur., Constitutional Law, § 55, p. 142, and cases there collected; *Sonzinsky* v. *United States*, 300 U. S. 506, 513, 514, 57 S. Ct. 554, 81 L. ed. 772.

But aside from that, it is axiomatic that the objectives of the appellants, however worthy they may be, may not be attained by unlawful means. As has been said, barratry, champerty, maintenance and like offenses are prohibited at common law. Many of the states, like Virginia,

have statutes prohibiting such offenses. Moreover, Rule 28 of the Canons of Professional Ethics, incorporated in the Rules for Integration of the Virginia State Bar and approved by this court, provides that stirring up litigation, directly or through agents, "is not only unprofessional, but it is indictable at common law," and is an offense for which the "offender may be disbarred." See 172 Va. xxviii; 194 Va. clii.

It was for the General Assembly to determine what laws should be enacted with respect to these matters.

On the whole we find no error in the lower court's refusal to quash or vacate the subpoenas, and the order appealed from is

Affirmed.

(Judgment)

Upon a writ of error and supersedeas to an order entered by the Hustings Court of the City of Richmond on the 18th day of March, 1957.

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the order aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the order complained of. It is therefore adjudged and ordered that the same be, and it is hereby affirmed, and that the plaintiffs in error pay to the defendant in error thirty dollars damages, and also its costs by it expended about its defense herein.

Which is ordered to be certified to the said Hustings Court.

A Copy,

Teste:

/s/ H. G. Turner
Clerk.

(Order Upon a Petition to Rehear)

Entered March 7, 1958

On mature consideration of the petition of National Association for the Advancement of Colored People, Incorporated; Virginia State Conference of NAACP Branches; W. Lester Banks, Executive Secretary of said Conference and by W. Lester Banks, a member of said Association residing in Virginia; and on behalf of other persons similarly situated, plaintiffs in error, to set aside the judgment rendered herein, on the 20th day of January, 1958, and grant a rehearing thereof, the prayer of the said petition is denied.

LIBRARY

FILED
JUN 3 1958
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

October Term, 1957

No. [redacted] 84

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INCORPORATED, ET AL,

Petitioners

v.

COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE,

Respondent

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF OF THE COMMONWEALTH OF VIRGINIA, AMICUS CURIAE, IN OPPOSITION TO PETITION

ALBERTIS S. HARRISON, JR.
Attorney General of Virginia
Supreme Court of Appeals Bldg.
Richmond, Virginia

WILLIAM H. KING
Special Asst. to Attorney General
915 Mutual Building
Richmond, Virginia
Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

THE INTEREST OF THE COMMONWEALTH OF VIRGINIA 1

THE ISSUES PRESENTED 2

STATEMENT 2

ARGUMENT 3

1. The "Controversy" Suggested by the Petitioners Has Now Become Moot 3
2. This Proceeding Involves No "Case" or "Controversy" 6
3. In No Instance Have the Petitioners Shown a Violation of Any Right They May Have Under the First Amendment 6

CONCLUSION: The petition for a writ of certiorari should be denied 8

APPENDIX:

Chapter 34 of Acts of General Assembly of Virginia, Extra Session of 1956 .....App. 1-2

TABLE OF CITATIONS

Cases

Alabama State Federation of Labor, et al v. McAdory, et al, 325 U. S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945) 7

Doremus v. Board of Education, 342 U. S. 429, 72 S. Ct. 394, 96 L. Ed. 475 (1952) 4

Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915) 7

McCabe v. Atchison, T. & S. F. R. Co., et al, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169 (1914) 7

Page

Muskrat v. United States, 219 U. S. 346, 31 S. Ct. 250, 55 L. Ed. 246 (1911) 6

Shaffer v. Howard, 249 U. S. 200, 39 S. Ct. 255, 63 L. Ed. 559 (1919) 5

United States of America v. Alaska Steamship Company, 253 U. S. 113, 40 S. Ct. 448, 64 L. Ed. 808 (1920) 4, 7

Statutes

Chapter 34 of Acts of General Assembly of Virginia, Extra Session of 1956 ..... 2, App. 1-2

Constitutional Provisions

First Amendment to the Constitution 7

Section 2 of Article III of the Constitution 6

In the

Supreme Court of the United States

October Term, 1957

No. 1049

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INCORPORATED, ET AL,

Petitioners

v.

COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE,

Respondent

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF OF THE COMMONWEALTH OF VIRGINIA, AMICUS CURIAE, IN OPPOSITION TO PETITION

THE INTEREST OF THE COMMONWEALTH OF VIRGINIA

This matter is one in which the petitioners seek to proceed against a Committee which no longer exists. Thus, there is no party respondent. However, the petitioners challenge the correctness of a decision of the Supreme Court of Appeals of Virginia, which decision the Commonwealth considers its duty to defend. Unless the Com-

monwealth, appearing as *amicus curiae*, asserts such defense, none can be asserted. Accordingly, the Commonwealth has a very real and substantial interest in this proceeding, and considers that its appearance as *amicus curiae* will be of material assistance to the Court.

THE ISSUES PRESENTED

1. The challenged subpoenas having become unenforceable because of the termination of the Committee for whose benefit they were issued, has the question of their validity become moot?
2. There being but one party to this proceeding, is there presented a "case" or "controversy" over which this Court has jurisdiction?
3. May this Court properly pass on a constitutional question based solely on hypothesis, and unsupported by facts of record?

STATEMENT

The Committee on Offenses Against the Administration of Justice, named by the petitioners as the respondent in this proceeding, was formed pursuant to Chapter 34 of the Acts of Assembly, enacted by the General Assembly of Virginia at its Extra Session of 1956. That Act is set out at pages 1 through 2 of the Appendix to this brief. Paragraph 2 of Section 3 of the Act provides: "This act shall be effective until the convening of the next regular session of the General Assembly." We believe this Court will take judicial notice that the "next regular session" convened on January 8, 1958. Accordingly, the named respondent became non-existent on that day. And there is no existing successor to that Committee.

Except for the failure to state, other than by inference, the facts recited in the preceding paragraph, the assertions made by the petitioners under the heading of "Statement of the Case" are substantially correct.

ARGUMENT

1.

The "Controversy" Suggested by the Petitioners Has Now Become Moot

The sole issue presented to the Supreme Court of Appeals of Virginia, and sought to be presented here, was whether the petitioners should obey subpoenas which were issued by the Hustings Court of the City of Richmond, and which directed the petitioners to disclose the names of their members to the "Committee on Offenses Against the Administration of Justice."

As we have stated, that Committee ceased to exist on the convening of the General Assembly of Virginia on January 8, 1958. By the death of the Committee, the questioned subpoenas became incapable of observance, and thus wholly without effect, because there was no "Committee" to whom the petitioners might give such information.

While it is true, as the petitioners recite, that the 1958 Session of the General Assembly made effective an act comparable to that under which the "Committee" was formed, yet that act has not resulted in the appointment of another committee. Should a new committee be appointed at some future time, it cannot now be known whether it will desire that the petitioners make known the names of their members. And even should another committee be so formed, and should it have such desire, it could in no way

seek the enforcement of the questioned subpoenas. Rather, it would find it necessary to commence anew a proceeding to obtain comparable subpoenas from some inferior court of the Commonwealth of Virginia.

It necessarily follows that the subpoenas challenged by this proceeding are wholly without effect and present no justiciable issue.

This principle was recently recognized in *Doremus* v. *Board of Education*, 342 U. S. 429, 72 S. Ct. 394, 96 L. Ed. 475 (1952), where this Court refused to consider the constitutionality of a state statute because the controversy had become moot. There, a New Jersey statute required the reading of Biblical verses at the opening of each public school day. A parent charged that the statute violated the First Amendment to the Constitution. In refusing to pass on the question, Mr. Justice Jackson speaking for the Court said, at pages 432-433 of 342 U. S.:

> "* * * However, it was agreed upon argument here that this child had graduated from the public schools before this appeal was taken to this Court. Obviously no decision we could render now would protect any rights she may once have had, and this Court does not sit to decide arguments after events have put them to rest."

To like effect is *United States of America* v. *Alaska Steamship Company*, 253 U. S. 113, 116, 40 S. Ct. 448, 64 L. Ed. 808 (1920), where Mr. Justice Day stated:

> "* * *, this Court 'is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or

counsel, whether in the case before the Court or in any other case, can enlarge the power, or affect the duty, of the Court in this regard.' " (Citing numerous cases)

Also, in *Shaffer* v. *Howard*, 249 U. S. 200, 201, 39 S. Ct. 255, 63 L. Ed. 559 (1919), a case quite similar to this, Mr. Chief Justice White said for the Court:

"Counsel for both parties having stated in answer to an inquiry on the subject submitted to them by the Court while the cause was pending after argument under submission that the term of office of the defendant officials had expired and their successors had qualified, and that there was no law of the state of Oklahoma authorizing a revival or continuance of the cause of action against such successors, it follows that the controversy has become merely moot, and that we have no authority to further consider or dispose of it. (Citing cases)

"True it is that counsel, in agreeing as to the statement above referred to, suggest that although the successors in office of the former defendants intend, in the discharge of their official duties, to enforce the tax complained of unless enjoined from doing so, nevertheless, in view of the importance to the people of the state that the subject-matter of the controversy be here determined, now request a decision of the pending cause irrespective of the disappearance of the parties defendant. But the absence of power which results from such disappearance cannot be supplied by the request referred to, since, after all, it amounts to but a suggestion that that be done which there is no authority to do; in other words, that the cause be decided in the absence of the parties whose presence is essential to its decision." (Citing cases)

The "controversy" suggested by the petitioners being now entirely moot, their petition should be denied.

2.

This Proceeding Involves No "Case" or "Controversy"

Section 2 of Article III of the Constitution invests this Court with jurisdiction over defined "cases" and "controversies." Most certainly, there can be no case or controversy unless a dispute of some character exists between two or more parties. Here there is but one party, the so-called "respondent" being non-existent.

As was aptly stated in *Muskrat* v. *United States*, 219 U. S. 346, 356, 31 S. Ct. 250, 55 L. Ed. 246 (1911):

> "'Judicial power * * * is the power of the Court to decide and pronounce a judgment and carry it into effect *between persons and parties* who bring a case before it for decision.'" (Italics ours)

This matter involving but one party, the Court is without jurisdiction to consider it, and for that reason also should deny the petition.

3.

In No Instance Have the Petitioners Shown a Violation of Any Right They May Have Under the First Amendment.

The petitioners, in asserting their right to free expression, state on pages 6 and 7 of their petition that their "views and aims are particularly unpopular and even dangerous in the South today, including Virginia" and that "revealing the names of petitioner-organizations' members would subject the members to reprisals, would seriously weaken the organizations and would threaten the continuance of petitioners' activities in Virginia to end racial discrimination."

However persuasive these conclusions may appear, they have no support whatever in the evidence of record. At no point did any witness so testify, nor any exhibit so recite. Thus, these conclusions are nothing more than mere conjecture and surmise.

It is well settled that this Court will not determine cases which, such as this, rest entirely upon hypothetical suggestion. In *Alabama State Federation of Labor, et al* v. *McAdory, et al*, 325 U. S. 450, 461, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945), Mr. Chief Justice Stone, speaking for this Court, said:

> "* * * This Court is without power to give advisory opinions. * * * [citing numerous authorities] * * *. *It has long been its considered practice not to decide abstract, hypothetical or contingent questions,* * * * [citing numerous authorities] * * *, or to decide any constitutional question in advance of the necessity for its decision, * * * [citing numerous authorities] * * *, or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, * * * [citing numerous authorities] * * *, or to decide any constitutional question except with reference to the particular facts to which it is to be applied, * * * [citing numerous authorities] * * *." (Italics ours)

See, to like effect, *McCabe* v. *Atchison, T. & S. F. R. Co., et al*, 235 U. S. 151, 164, 35 S. Ct. 69, 59 L. Ed. 169 (1914); *Hendrick* v. *Maryland*, 235 U. S. 610, 621, 35 S. Ct. 140, 59 L. Ed. 385 (1915); and *United States of America* v. *Alaska Steamship Company*, 253 U. S. 113, 116, 40 S. Ct. 448, 64 L. Ed. 808 (1920).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALBERTIS S. HARRISON, JR.
Attorney General of Virginia
Supreme Court of Appeals Bldg.
Richmond, Virginia

WILLIAM H. KING
Special Asst. to Atty. General
915 Mutual Building
Richmond, Virginia
Counsel for Amicus Curiae

July 3, 1958

CERTIFICATE OF SERVICE

I, William H. King, one of counsel for *Amicus Curiae* and a member of the Bar of the Supreme Court of the United States, do certify that I have served upon each of counsel of record for the petitioners copies of the foregoing brief by depositing such copies in the United States Mail on July 3, 1958, with first class postage prepaid, and addressed to each of such counsel of record at his post office address as it appears in the petition for a writ of certiorari.

(s) WILLIAM H. KING
one of Counsel for Amicus Curiae

Chapter 34 of Acts of Assembly, Extra Session of 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby created a joint committee of the General Assembly to be known as the Committee on Offenses Against the Administration of Justice, hereinafter referred to as Joint Committee. Such Joint Committee shall investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being administered and enforced and shall specifically direct its attention to the administration and enforcement of those laws relating to champerty, maintenance, barratry, running and capping and other offenses of any other nature relating to the promotion or support of litigation by persons who are not parties thereto. The Joint Committee shall be composed of five members to be selected as follows: Three of the members shall be appointed by the Speaker of the House of Delegates from the membership of the House Committee for Courts of Justice and two of the members shall be appointed by the President of the Senate from the membership of the Senate Committee for Courts of Justice. Members shall serve on the Joint Committee during the effective period of this act: the presiding officer of each house shall have the power to fill vacancies occurring on the Joint Committee. The Joint Committee shall meet at least once in each three month period and oftener on call of the chairman or a majority of the members. The members of the Joint Committee shall receive the same salary and expenses for each day spent in the performance of their duties as is allowed under §§ 14-29.1 and 14-5 of the Code of Virginia, respectively, to be paid from the contingent fund of the General Assembly

together with any other expenses incurred by the Joint Committee. The Joint Committee is hereby specifically vested with the powers and duties conferred upon committees of the General Assembly by § 30-10 of the Code of Virginia and any other provisions of law under which powers are conferred upon committees of the General Assembly. In addition to the foregoing powers, the Joint Committee shall be empowered to administer oaths and examine witnesses and may employ counsel to assist in its investigations. The Joint Committee may, in addition to the procedure provided in § 30-10 of the Code of Virginia, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court, upon such motion, shall issue such subpoenas, writs, processes or orders as the court deems necessary.

§ 2. All officers and agencies of the State shall assist the Joint Committee in the discharge of its duties.

§ 3. The Joint Committee shall have plenary power to oversee the administration and manner of enforcement of the several statutes set forth in § 1 hereof, and, not later than sixty days preceding the next regular session of the General Assembly, it shall make a written report to the General Assembly upon the administration and method of enforcement of said statutes and shall set forth in its report its findings and recommendations and drafts of any amendatory legislation the Joint Committee deems desirable.

2. This act shall be effective until the convening of the next regular session of the General Assembly.

3. An emergency exists and this act is in force from its passage.